

**LIENS ON REAL PROPERTY FOR UNPAID****WATER BILLS**

2009 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill authorizes a water corporation or public water system to file a lien against a customer's real property for past due fees and charges.

**Highlighted Provisions:**

This bill:

- ▶ authorizes a water corporation or public water system to file a lien for past due fees and charges upon a customer's real property to which services were provided;
- ▶ authorizes a water corporation or public water system to foreclose on the lien;
- ▶ sets the lien priority at the time the water corporation or public water system files the lien with the county recorder where the customer's real property is located; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**38-2-4**, as last amended by Laws of Utah 1996, Chapter 198

ENACTS:

**38-2-8**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **38-2-4** is amended to read:

**38-2-4. Disposal of property by lienholder -- Procedure.**

(1) Any party holding a lien upon real or personal property as provided in this chapter

may dispose of the property in the manner provided in Subsection (2).

(2) (a) The lienor shall give notice to the owner of the property, to the customer as indicated on the work order, if applicable, and to all other persons claiming an interest in or lien on it, as disclosed by the records of the county recorder's office, Motor Vehicle Division, lieutenant governor's office, or of corresponding agencies of any other state in which the property appears recorded, registered or an interest in or lien on it is evidenced if known by the lienor.

(b) The notice shall be sent by certified mail at least 30 days before the proposed or scheduled date of any sale and shall contain:

- (i) a description of the property and its location;
- (ii) the name and address of the owner of the property, the customer as indicated on the work order, if applicable, and any person claiming an interest in or lien on the property;
- (iii) the name, address, and telephone number of the lienor;
- (iv) notice that the lienor claims a lien on the property for labor performed and services ~~[performed]~~ provided and interest and ~~[storage]~~ fees charged, if any, and the cash sum which, if paid to the lienor, would be sufficient to redeem the property from the lien claimed by the lienor;
- (v) notice that the lien claimed by the lienor is subject to enforcement under this section and that the property may be sold to satisfy the lien;
- (vi) the date, time, and location of any proposed or scheduled sale of the property and whether the sale is private or public, except that no property may be sold earlier than 45 days after completion of the repair work or the invoice on the services becomes past due, whichever is later; and
- (vii) notice that the owner of the property has a right to recover possession of the property without instituting judicial proceedings by posting bond.

(3) If the owner of the property is unknown or his whereabouts cannot be determined, or if the owner or any person notified under Subsection (2) fails to acknowledge receipt of the notice, the lienor, at least 20 days before the proposed or scheduled date of sale of the property, shall publish the notice required by this section once in a newspaper circulated in the county where the ~~[vehicle]~~ property is held or located.

(4) A lienor may have his property released from any lien claimed on it under this

chapter by filing with the clerk of a justice court or district court a cash or surety bond, payable to the person claiming the lien, and conditioned for the payment of any judgment that may be recovered on the lien, with costs, interest, and storage fees.

(5) (a) The lienor has 60 days after receiving notice that the lienor has filed the bond provided in Subsection (4) to file suit to foreclose his lien.

(b) If the lienor fails to timely file an action, the clerk of the court shall release the bond.

(6) Property subject to lien enforcement under this section may be sold by the lienor at public ~~[or private sale]~~ sale, or for personal property, at a public or private sale; however, in the case of a private sale, every aspect of the sale, including the method, manner, time, place, and terms shall be commercially reasonable.

(7) This section may not be construed to affect an owner's right to redeem his property from the lien at any time prior to sale by paying the amount claimed by the lienor for work done, interest, and storage fees charged and any costs incurred by the repair shop for using enforcement procedures under this section.

Section 2. Section **38-2-8** is enacted to read:

**38-2-8. Lien for past due water service fees -- Limitations.**

As used in this section:

(1) A public water system means the owner of a system providing water for human consumption and other domestic uses that:

(a) has at least 15 service connections; or

(b) serves an average of 25 individuals daily for at least 60 days of the year.

(c) "Public water system" does not include a government-owned system.

(2) A water corporation has the same meaning as provided in Section 54-2-1.

(3) (a) A water corporation or a public water system may file a lien for the balance of past due fees and charges for culinary water services, including interest and costs, with the county recorder of the county in which a customer's real property is located.

(b) The lien filed in Subsection (3)(a) shall become a lien upon the customer's real property to which the water corporation's or public water system's services were provided.

(c) The lien on real property created under Subsection (3)(b):

(i) has as its priority the date and time when a notice of lien is filed according to

94 Subsection (1)(a); and

95 (ii) shall be foreclosed upon or otherwise enforced by the water corporation or public  
96 water system in accordance with Section 38-2-4.

97 (d) (i) Subject to Subsection (3)(c)(ii), in the event a discrete portion of the property is  
98 not served by, and is not dependent upon, the culinary water service at issue, the property  
99 owner may, prior to the sale, petition a court of general jurisdiction to divide the property into  
100 two parcels, with each parcel being of sufficient size and configuration to comply with existing  
101 zoning ordinances, and the parcel to which the culinary water service applies shall be subject to  
102 sale under this section.

103 (ii) The sale described in Subsection (3)(c)(ii) would be stayed pending court action on  
104 the petition.

105 (4) (a) A lien described under Subsection (3) is not valid if recorded after a new owner  
106 records a document conveying title of the customer's property to the new owner.

107 (b) Subsection (4)(a) does not preclude a water corporation or public water system  
108 from recording a lien under Subsection (3) with respect to past due fees or charges for services  
109 provided to the new owner after the date that title to the property is transferred to the new  
110 owner.

111 (5) Nothing in this section may be construed to:

112 (a) waive or release the customer's obligation to pay fees or charges that the water  
113 corporation or public water system has imposed; or

114 (b) nullify or terminate a valid lien.

115 (6) After all amounts owing under a lien established under Subsection (3) have been  
116 paid, the water corporation or public water system shall file for record in the county recorder's  
117 office a release of the lien.

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**Legislative Review Note**  
**as of 11-4-08 8:34 AM**

**Office of Legislative Research and General Counsel**